

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEVIN GROODY,

Plaintiff,

- against -

COLDWELL BANKER REAL ESTATE LLC

Defendant.

Docket No. 1:17-cv-8658

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Devin Groody (“Groody” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Coldwell Banker Real Estate LLC, (“Coldwell” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of an apartment building located at 20 Church Street, owned and registered by Groody, a professional photographer. Accordingly, Groody seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Groody is a professional photographer having a usual place of business at 11 Birch Street, Locust Valley, New York 11560

6. Upon information and belief, Coldwell is a limited liability company duly organized and existing under the laws of the State of California, with a place of business at 2010 Williamsbridge Road, Bronx, New York 10461. At all times material, hereto, Coldwell has owned and operated a website at the URL: www.ColdwellBankerHomes.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Groody photographed an apartment building located at 20 Church Street (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Groody is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph is registered with the United States Copyright Office and given registration number VA 2-073-581.

B. Defendant’s Infringing Activities

11. Coldwell copied the Photograph and used it to sell an apartment at 20 Church Street for \$729,000. A screen shot of the Website with the Photograph is attached hereto as Exhibit B.

12. Coldwell did not license the Photograph from Plaintiff for its Website, nor did Coldwell have Plaintiff’s permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF

(COPYRIGHT INFRINGEMENT AGAINST COLDWELL)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. Coldwell infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Coldwell is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Coldwell have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Coldwell be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Coldwell be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of

Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 8, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York
Tel: 516-233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Devin Groody